

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROBERTO DEJESUS,

Plaintiff,

-against-

V. SANTIAGO; P. DELOVIC; R. MAYES; F.  
COTTO; A. RODRIGUEZ,

Defendants.

22-CV-9559 (CS)

ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

Plaintiff, who is currently incarcerated at Auburn Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated November 10, 2022, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.<sup>1</sup>

**DISCUSSION**

**A. Service on Named Defendants**

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.<sup>2</sup> *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

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<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

<sup>2</sup> Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued.

To allow Plaintiff to effect service on Defendants V. Santiago, P. Delovic, R. Mayes, F. Cotto, and A. Rodriguez through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each Defendant. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon Defendants.

If the complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

**B. Local Civil Rule 33.2**

Local Civil Rule 33.2, which requires defendants in certain types of prisoner cases to respond to specific, court-ordered discovery requests, applies to this action. Those discovery requests are available on the Court’s website under “Forms” and are titled [“Plaintiff’s Local Civil Rule 33.2 Interrogatories and Requests for Production of Documents.”](#) Within 120 days of service of the complaint, Defendants must serve responses to these standard discovery requests. In their responses, Defendants must quote each request verbatim.<sup>3</sup>

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<sup>3</sup> If Plaintiff would like copies of these discovery requests before receiving the responses and does not have access to the website, Plaintiff may request them from the Pro Se Intake Unit.

**C. Application for Pro Bono Counsel**

Plaintiff seeks pro bono counsel. (ECF 4.) The factors to be considered in ruling on an indigent litigant's request for counsel include the merits of the case, Plaintiff's efforts to obtain a lawyer, and Plaintiff's ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits are "[t]he factor which command[s] the most attention." *Cooper*, 877 F.2d at 172. Because it is too early in the proceedings for the Court to assess the merits of the action, Plaintiff's motion for counsel is denied without prejudice to renewal at a later date.

**CONCLUSION**

The Court denies Plaintiff's request for pro bono counsel (ECF 4), without prejudice to renewal. Local Civil Rule 33.2 applies to this action.

The Clerk of Court is instructed to issue summonses for Defendants V. Santiago, P. Delovic, R. Mayes, F. Cotto, and A. Rodriguez; complete the USM-285 forms with the addresses for these defendants; and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 14, 2022  
White Plains, New York

  
CATHY SEIBEL  
United States District Judge

**DEFENDANTS AND SERVICE ADDRESSES**

1. Correction Officer V. Santiago  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562-5442
2. Correction Officer P. Delovic  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562-5442
3. Commissioner's Hearing Officer R. Mayes  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562-5442
4. Investigator F. Cotto  
DOCCS Office of Special Investigations  
Harriman State Office Campus  
1220 Washington Avenue  
Albany, New York 12226-2050
5. A. Rodriguez, Acting Director of Special Housing  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562-5442